IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.423 OF 2005
IN
CRIMINAL APPEAL NO.72 OF 2005

Shri Sunil Jaywant Kashikar ...Petitioner.

V/s

The State of Maharashtra & Anr. ...Respondent.

Mr. Haji Panna with S.R. Pasbola for the applicant.

Ms. A. Iyer advocate for the complainant.

Mr. D.P. Adsule for the State.

CORAM: V.M.KANADE,J.
DATE: 18-02-2005

P.C.

1. Applicant is convicted by the Trial Court for an offence punishable under section 307 of the Indian Penal Code and is sentenced to suffer R.I. for six years. The Trial Court further directed the applicant to pay compensation to the tune of Rs 5 lakhs to the complainant - Aparna Anil Prabhu and, in default, to suffer R.I. for one year.

2. The appeal against that order is admitted. During the pendency of the appeal, applicant has filed this application seeking for bail.

3. Brief facts are that the complainant Aparna Anil Prabhu was working in one Tele Marketing Company

called Tele Sale. Applicant was residing in front of her house in jail. Prosecution case is that the applicant used to tease the complainant from the time she was in 10th standard and that because the complaint was made by the parents of the complainant, the eve teasing stopped but the accused simply used to follow her. This pattern was followed by the applicant for next four years. Thereafter, on 10/3/1999, the complainant received a telephonic call from the accused requesting her to marry him. The complainant, however, banged the telephone. Thereafter, again another telephonic call was made and this time also she banged the telephone. On 11/3/1999, the complainant left her house for going to the office and the accused met her on the road and again requested her to marry him. However, she did not pay any heed and she started proceeding towards the office. The accused then threatened to kill her and then commit suicide. The accused, thereafter, removed one yellow coloured plastic bag and poured the contents on her person as a result of which she received serious burn injuries. The complainant realised that the accused had poured acid on her and she rushed to her office and poured water on her person and, thereafter, she was taken to the hospital.

As a result of the pouring of the acid on her, the complainant lost her one eye permanently. Her face was permanently disfigured and she also received burn injuries all over her body. Prosecution case is that soon after the alleged incident, the accused made an attempt to commit suicide by consuming insecticide and was admitted in the hospital. He was subsequently discharged from the hospital. The Investigating Officer, on the basis of the complaint, recorded the statement of the witnesses. The charge-sheet was filed and the Trial Court on the basis of the evidence adduced by the prosecution convicted the accused for an offence punishable under section 307 of the Indian Penal Code.

3. It is an admitted position that the applicant has not deposited a single farthing towards compensation which was directed to be paid to the complainant. Pursuant to the directions given by this Court, the applicant added the complainant as respondent no.2 and notice was given to her. The complainant appeared and stated that she was still undergoing treatment and already 13 operations were performed by the plastic surgery and five eye operations were performed. However, all of them were unsuccessful. On account of treatment, she had spent a substantial amount of money

and that, in the process, she lost her job and also they had to sell their house and stay elsewhere.

4. The learned Counsel appearing on behalf of the applicant submitted that the applicant would, at the most, arrange for an amount of compensation upto Rs 2 lakhs. No amount, however, has been deposited in the Court by the applicant. The learned Counsel appearing on behalf of the applicant submitted that it was an unfortunate incident that the applicant in a fit of rage has committed the said act and had also tried to commit suicide. He submitted that, thereafter, he was released on bail during trial and the applicant had not misbehaved during the pendency of the trial. He further submitted that the applicant is in the last year of his Chartered Accountancy Course and, after he completes the Course, he would be in a position to pay compensation to the complainant. He further submitted that the appeal was not likely to come up for hearing for some time and that the applicant had a statutory right of bail and during this period the sentence was liable to be suspended as otherwise his statutory right would become infructuous.

5. The learned APP for the State has taken me through the judgment and order of the Trial Court.

6. The applicant has not made out a prima facie case for grant of bail. Prosecution, in my view , has prima facie proved the offence beyond reasonable doubt. P.W.1 - Aparna has stated in her evidence the sequence of events which had happened and from her evidence it can be seen that the applicant had committed an act with premeditation and after careful preparation. In the complaint itself at Exhibit-11, the complainant has stated what the applicant had said before he threw acid on her and the same reads in Hindi as follows because though the complaint was in Marathi the quotation is in Hindi.

"Tum Mere Saath Shadi Nahi Karegi To Mai Tumhe Bhi Mere Saath Janse Maar Dalunga."

7. In her examination-in-chief also, P.W.1 - Aparna has stated as under:-

"The accused was repeatedly asking me to marry him. He also said that if I do not marry him he will kill me and then will kill himself."

From the evidence of the prosecutrix it can be seen that the injuries which were received were very

grievous injuries and that she survived miraculously. No case is, therefore, made out for grant of bail.

Application for bail is dismissed.

V.M. KANADE, J.